

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FILE

In the Matter of

Request for Modification of  
Regulations Affecting the  
Ownership of Specialized  
Mobile Radio (SMR) Systems  
Within 40 Miles of Each Other

RM-8030

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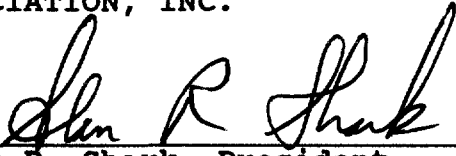
To: Chief, Private Radio Bureau

COMMENTS

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By:

  
Alan R. Shark, President  
1835 K Street N.W., Suite 203  
Washington, D.C. 20006

Of Counsel:

Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nace & Gutierrez  
1819 H Street, N.W., Suite 700  
Washington, D.C. 20006  
(202) 857-3500

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.405 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1/</sup> A&B Electronic's, Inc. ("A&B") requests that the FCC modify its rules governing trunked SMR systems to permit the common ownership of multiple, mature but unloaded SMR facilities within 40 miles under certain circumstances, and to permit the system licensing of such facilities if they satisfy specified requirements. The Petition also recommends the application of an aggregate loading standard in defined circumstances.

AMTA supports the overall objective of A&B's proposals. If the Commission's rules can be modified to balance more effectively the ability to develop wider-area SMR systems and the need to prevent spectrum warehousing the public interest will be served. A&B's Petition is a thoughtful and thought-provoking approach to those issues which warrants serious consideration. Nonetheless, AMTA recommends that the Commission consider these proposals, not in isolation, but as part of its broader evaluation of the 800 MHz and 900 MHz regulatory structure which is expected to be undertaken this year. While the FCC may elect to adopt the approach described by A&B, it should do so after a thorough evaluation of the various methods by which that

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<sup>1/</sup> A&B Electronics, Inc. ("A&B") Petition for Rule Making, In the Matter of Request for Modification of Regulations Affecting the Ownership of Specialized Mobile Radio (SMR) Systems Within 40 Miles of Each Other, RM-8030 (May 26, 1992) ("Petition").

regulatory scheme might be modified to satisfy the evolving requirements of the SMR industry.

## I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the SMR industry. Its members operate both trunked and conventional SMR facilities throughout the country. AMTA and its members have been in the forefront in the development of multi-site, advanced technology SMR systems.<sup>2/</sup> To date, the majority of those efforts have been focused on urban markets where spectrum scarcity necessitates intensive use of available frequencies.

However, AMTA has also recognized the needs of the more rural SMR industry whose development has been inhibited by system limitations and loading requirements more appropriate for urban areas. Over three years ago, AMTA petitioned the Commission to permit rural, multi-site SMR systems.<sup>3/</sup> The Association has repeatedly urged the FCC to act on that proposal, efforts which, so far, have been unsuccessful.

The instant proposal is a natural outgrowth of AMTA's earlier recommendation. It incorporates the experiences (and frustrations) of rural operators in recent years as customer

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<sup>2/</sup> All existing SMR operators which have requested wide-area advanced technology authorizations from the FCC are AMTA members.

<sup>3/</sup> In the Matter of Modification of FCC Rule Section 90.627(b) Governing Multiple Sites for Specialized Mobile Radio Service Systems in Rural Markets, RM-6724 (March 27, 1989).

roaming requirements have dictated the implementation of wider-area systems. AMTA recommends that the FCC incorporate the instant proposal in its consideration of the optimal 800 MHz and 900 MHz regulatory environment for an evolving land mobile industry.

## II. DISCUSSION

The premise of A&B's proposal is unquestionably accurate: the 40 mile rule and loading requirements<sup>4/</sup> which promoted healthy competition and superior customer service among urban SMR licensees have had a less felicitous impact on rural operators. Outside of the major metropolitan areas, the 40 mile rule has discouraged the development of wider-area SMR operations and system consolidation by prohibiting licensees from owning multiple facilities within 40 miles unless they satisfy urban-oriented loading requirements. To the extent that these restrictions have hindered the implementation of systems which would satisfy documented user demands, and inhibit the acquisition of sufficient, commonly owned spectrum to justify conversion to advanced technologies, the public interest will not be served.

A&B's recommended modifications of the 40 mile rule strike a careful balance between correcting that problem without permitting channel hoarding. Recognizing that spectrum

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<sup>4/</sup> These requirements are detailed in 47 C.F.R. §§90.627 and 90.631 respectively.

warehousing is objectionable to the extent that it precludes competitors from entering a marketplace, the instant proposal is focused on areas where spectrum has been available to new SMR entrants. In those markets, A&B would treat renewed, but still unloaded, stations as though they had satisfied applicable loading requirements. The proposal also recommends a "system license" designation under circumstances which indicate that the licensee is neither speculating in nor hoarding unbuilt frequencies. Licensees so designated would effectively be free from the 40 mile rule and permitted to locate authorized frequencies as dictated by customer demand within an MSA or RSA, subject to applicable co-channel separation requirements.

AMTA considers A&B's proposals individually reasonable and collectively consistent with the Association's desire to facilitate the implementation of marketplace-dictated and technically advanced SMR systems. However, AMTA remains reluctant to recommend adoption of any such rule changes in what is essentially a piecemeal fashion. The Association instead suggests that the instant Petition, as well as others currently pending before the Commission,<sup>5/</sup> be incorporated into the anticipated FCC review of the overall 800 MHz and 900 MHz

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<sup>5/</sup> National Association of Business and Educational Radio, Inc., ("NABER") Petition for Rule Making, In the Matter of Request for Amendment of the Commission's Rules and Regulations Concerning Separations Between 800 and 900 MHz Land Mobile Radio Systems in the Business and General Category Radio Service Pools, RM-8028 (March 6, 1992); and NABER Petition for Rule Making, In the Matter of Request for Amendment of the Commission's Rules and Regulations Concerning Wide Area Specialized Mobile Radio and Business Radio Systems, RM-8029 (March 13, 1992).

regulatory structure. By doing so, the Commission will ensure that all aspects of the scheme adopted are consistent and likely to advance the interests of this industry and the customers it serves. A&B's proposal is a logical starting point from which such an analysis might be developed.

### III. CONCLUSION

A&B has crafted a reasonable approach toward facilitating SMR wide-area system licensing while discouraging spectrum warehousing. AMTA recommends that the FCC incorporate these proposals in its review of the current licensing structure at 800 MHz and 900 MHz.

**CERTIFICATE OF SERVICE**

I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 12th day of August, 1992, placed copies of the foregoing Comments in United States mail, postage prepaid, to the following:

Ralph Haller, Chief\*  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C. 20554

Richard J. Shiben, Chief\*  
Land Mobile and Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street N.W., Room 5202  
Washington, D.C. 20554

Rosalind K. Allen, Chief\*  
Rules Branch  
Land Mobile and Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street N.W., Room 5202  
Washington, D.C. 20554

Terry L. Fishel, Chief  
Land Mobile Branch  
Licensing Division  
Private Radio Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17325

Russell H. Fox, Esq.  
Gardner, Carton & Douglas  
1301 K Street N.W.  
Washington, D.C. 20005  
Attorney for A&B Electronics, Inc.

  
\_\_\_\_\_  
M.A. Spinks

\* By Hand Delivery